Energy Automation Systems, Inc. v. Xcentric Ventures, LLC et al Doc. 52

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

ENERGY AUTOMATION SYSTEMS, INC.,	)	
	)	
Plaintiff,	)	Case No. 3:06-1079
	)	
v.	)	Judge Trauger
	)	
XCENTRIC VENTURES, LLC, *ET AL.*,	)	Magistrate Judge Griffin
	)	
Defendants.	)	

DEFENDANT XCENTRIC VENTURES, L.L.C.'S RESPONSE TO PLAINTIFF'S MOTION TO SUBSTITUTE SERVICE OF PROCESS FOR DEFENDANTS EDWARD MAGEDSON AND

COUNSEL FOR DEFENDANT XCENTRIC'S COMPLIANCE WITH JUNE 20, 2007 ORDER

Defendant XCENTRIC VENTURES, L.L.C. ("Xcentric") respectfully submits the following Response to Plaintiff ENERGY AUTOMATION SYSTEMS, INC.'s ("EASI") Motion (Doc. #49) to Substitute Service of Process for Defendant Edward Magedson and Counsel for Defendant Xcentric's Compliance with the June 20, 2007 Order.(Docket # 50 and Docket # 51)

I. Compliance with Order

The address at which Edward Magedson may be served with process in this case is 3200 N. Central Ave., Suite 2000, Phoenix, Arizona, 85012. This is the address of undersigned counsel. Mr. Magedson has authorized undersigned counsel to accept service for Mr. Magedson in this case.

Dockets.Justia.com

II. Response to Motion to Substitute Service

After careful review of the pleadings that have been filed related to service, undersigned counsel hopes to correct inaccurate impressions and to address the Court's apparent concerns that led this Court to issue the June 20, 2007 orders (Docket # 50 and Docket # 51).

A. Magedson does not Avoid Service

First, Ed Magedson does not avoid service. He does two things that have been interpreted as avoidance of service: (1) he refuses to disclose his residence address because he has been the subject of death threats, physical attacks, and even gun shots fired outside of his previous address; and (2) he does not voluntarily consent to waive service in lawsuits filed outside of Arizona (he freely waives service in Arizona cases where the Court has jurisdiction over him). A sampling of the written death threats are attached as Exhibit "A." The verbal death threats are far more frequent and explicit.

B. Apparent Failure to Comply with Previous Order

On April 23, 2007, EASI filed a Motion and Memorandum for An Extension of Time for Service of Summons and Complaint Upon Ed Magedson. Both the opening paragraph and the conclusion stated the same request as was in the title – for an extension of time. In a single sentence, buried in the motion, EASI also asked for Xcentric to provide an address at which Magedson can be served.

Defendant did not oppose the Motion, because Defendant understood the relief requested to be only an extension of time. This Court's June 11, 2007 Order granted the Motion, but undersigned counsel did not understand that to mean that Xcentric was ordered to provide Magedson's address. Undersigned counsel was on vacation the first week of June and returned on June 11. Unfortunately, after returning, the undersigned Counsel was significantly backlogged and did not read or respond to local counsel's requests to address the issue for several days. When Counsel did respond, Counsel was inadvertently unaware that there was an Order or even a motion to produce such information. Thus, Counsel responded that the information would not be provided, consistent with her Client's wishes.

C. Inability of Counsel to Provide Home Address

The undersigned Counsel does not know Mr. Magedson's home address. The only address that Counsel has for him is his former address (where EASI attempted service) and a post office box. Further, Mr. Magedson considers his home address highly confidential and, if Counsel were privy to that information (which Counsel is not) Counsel would be prohibited from disclosing it, as doing so would be a violation of Counsel's ethical obligation to Mr. Magedson.

D. EASI Did Not Comply with Rule 4(d)

There is one additional highly relevant fact regarding service that has never been disclosed to this Court by EASI. EASI claims that it has made substantial effort to serve Mr. Magedson. Yet, EASI has never, sent a request for waiver of service pursuant to Fed.R.Civ.P. 4(d).

III. CONCLUSION

Xcentric and its counsel apologizes to this Court that several pleadings and orders were involved in this issue related to service and undersigned counsel takes responsibility for not carefully reading EASI's Motion For An Extension of Time for Service. Undersigned counsel is now authorized by Mr. Magedson to accept service in this case and will do so.

Dated: June 21, 2007 By: /s/ Maria Crimi Speth

Maria Crimi Speth, Esq.
JABURG & WILK PC
3200 North Central Avenue
Suite 2000
Phoenix, Arizona 85012
Tel.: (602) 248-1000
Fax: (602) 248-0522
mcs@jaburgwilk.com

Attorneys for Defendant Xcentric Ventures, L.L.C

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing document was made via electronic mail using the Electronic Filing System upon the following:

Timothy L. Warnock
John R. Jacobson
William L. Campbell, Jr.
W. Russell Taber
BOWEN RILEY WARNOCK & JACOBSON, PLC
1906 West End Avenue
Nashville, TN 37203

Dated: June 21, 2007 By: /s/ Maria Crimi Speth